Filed 4/29/19 Glaude v. Tinsley CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

DONALD GLAUDE, Plaintiff and Appellant, v. FREDERICK TINSLEY, Defendant and Respondent.	A152699 (Alameda County Super. Ct. No. HG14743483A) ORDER MODIFYING OPINION AND DENYING REHEARING

BY THE COURT:

It is ordered that the opinion filed herein on April 9, 2019, be modified as follows: A footnote is added at the end of the first full paragraph on page 8. The text of the footnote follows:

"After briefing of this appeal was completed and oral argument had been waived, Plaintiff substituted himself in pro per in place of his attorney. A few weeks after that, Plaintiff mistakenly filed in a different matter a request for judicial notice that he intended to file in this matter. Having discovered his mistake, Plaintiff asks us to take judicial notice of the materials he submitted, contending that they provide evidence of material facts relevant to this appeal. He claims the documents show that as of 2017 he and Tinsley were the current owners of the Property, each owning 50 percent, that Tinsley acquired his interest in 2005, and that Plaintiff acquired his in 2015.

"Plaintiff's request is improper, and we deny it. His request is untimely, and the documents he has submitted with the request are not authenticated. Further, Plaintiff does not state whether the matters were presented to the trial court, or state why the matters are subject to judicial notice under the pertinent sections of the Evidence Code. (Cal. Rules of Court, rule 8.252(a).)

"Even if we were to take judicial notice of the documents and accept the truth of their contents, the most they would do is raise a triable issue as to whether Plaintiff has a 50 percent interest in the Property. That is not a material issue in this case, where Plaintiff's cause of action rests on his allegation that he has sole ownership of the Property."

The petition for rehearing is denied. This modification does not change the judgment.

Dated: _____ _____
Kline, P.J.

Filed 4/9/19 Glaude v. Tinsley CA1/2 (unmodified opinion)

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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DONALD GLAUDE, Plaintiff and Appellant, v. FREDERICK TINSLEY, Defendant and Respondent;	A152699 (Alameda County Super. Ct. No. HG14743483A)

Donald Glaude (Plaintiff) sued Frederick Tinsley to quiet title to a piece of real property, and now appeals from the trial court's grant of summary judgment to Tinsley. Because Plaintiff fails to show error, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, who represented himself in the trial court, filed a Fourth Amended Complaint alleging a single cause of action, quiet title, against a single defendant, Tinsley. The claim concerned real property in the City of Newark (the Property) that had once been owned by Plaintiff's mother, Senora Glaude (Senora).[1]

Plaintiff alleged the following in his Fourth Amended Complaint: In February 2005, Senora executed a grant deed, instrument number 2008-023847, in which she

[1] The facts of this case involve more than one person with the last name "Glaude," so we use their first names for clarity. The Property is commonly known as 8096 Juniper Avenue, Newark, California 94560 and has a legal description of lot 41, Tract 2155, filed July 21, 1961, Map Book 44, page 55, Alameda County Records, Parcel Number 092-0119-023.

transferred the property to herself, Plaintiff, and Earl Quincy Glaude (Earl Quincy) as joint tenants. (That deed, however, was not recorded until January 31, 2008 "due to the lack of Urgency.") In May 2005, in order to refinance a loan, Senora transferred her interest in the Property to Tinsley and herself as joint tenants in a grant deed, instrument number 2005-214751, that was recorded on May 25, 2005. In December 2007, in a trust transfer deed, she transferred her interest in the Property to herself as trustee of the Senora Glaude Trust (the Trust).[2] Upon Senora's death in 2010, Earl Quincy was designated first successor trustee and sole beneficiary of the Trust, in accordance with the Trust terms. At some point, Angela Moore became the second successor trustee, and then, in 2011, Plaintiff became the third successor trustee.[3] As trustee, Plaintiff released the Trust's interest in the Property to the beneficiary, Earl Quincy, who then quitclaimed it to Plaintiff.[4]

The Fourth Amended Complaint goes on to allege that Plaintiff and Tinsley currently hold title to the Property in "50/50% ownership," but also alleges that Plaintiff is the sole owner of the Property, based on instrument number 2013-294955, which "[g]rants title to the [P]roperty in [fee] simple as to the full 100%" to Plaintiff.[5] It alleges

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[2] According to the complaint, Senora stated in her November 29, 2007 Declaration of Trust that Tinsley's "name is in the process of being removed from title of" the Property. There is no allegation in the complaint, nor have we found any indication in the record, that Tinsley was ever removed from the title.

[3] Earl Quincy remained the beneficiary.

[4] The Fourth Amended Complaint does not identify the documents reflecting the alleged release and quitclaim, nor are the documents attached to that complaint. But included in the record as attachments to earlier complaints and as attachments to a declaration by Plaintiff are copies of a trust transfer deed, instrument number 2013-294955, recorded August 30, 2013, apparently reflecting Plaintiff's grant of the Trust's interest in the Property to Earl Quincy, the beneficiary of the Trust, and a quitclaim deed, instrument number 2013-294980, also recorded on August 30, 2013, apparently reflecting Earl Quincy's quitclaim of his interest in the Property to Plaintiff.

[5] We assume this is a reference to the document 2013-294955 we describe above in footnote 4, which appears to be a trust transfer deed showing Plaintiff's grant of the Trust's interest in the property to Earl Quincy.

that Tinsley claimed an interest in the property adverse to Plaintiff's, and that Plaintiff sought to quiet title "solely in his name, free and clear of any claimed interest of defendant," as of August 28, 2013.[6]

Tinsley moved for summary judgment, arguing that Plaintiff, who had conceded that Tinsley had an interest in the property, could not establish sole title to the property and therefore could not prevail on his quiet title action. Tinsley relied on the statutory requirement that a plaintiff in a quitclaim action must file a verified complaint that includes "[t]he title of the plaintiff as to which a determination under this chapter is sought and the basis of the title." (Code Civ. Proc., § 761.020, subd. (b).[7]) Tinsley came forward with evidence that as of June 2014, the Assessor's Office showed that Moore, who was named the Trust's successor trustee in 2011, remained the successor trustee, and that the Assessor's Office had refused to process instrument 2013-294955, the document on which Plaintiff based his claim of title, because its records did not show Plaintiff as trustee.

Plaintiff opposed Tinsley's motion, contending that Tinsley's documents were "out dated," but Plaintiff did not come forward with, or even refer to, any evidence to support that contention. The trial court concluded that Plaintiff had failed to establish a triable issue of material fact as to whether he had sole title to the property, and ruled in Tinsley's favor.

Plaintiff then moved for reconsideration under section 1008, subdivision (a), arguing that after he filed his Fourth Amended Complaint he discovered new evidence that his "documents of ownership [were] recorded and processed" in August 2015. He claimed that the new evidence would "void" Tinsley's evidence concerning the validity of instrument 2013-294955 and show that Plaintiff currently owned the property. The new evidence was an August 11, 2017 printout from the Assessor's Office showing the

[6] The record shows that as the date on which Plaintiff signed instrument 2013-294955.

[7] Statutory references are to the Code of Civil Procedure unless otherwise stated.

history of its records on the Property in the form of a list identifying only by date and document number the papers filed with the Assessor's Office from November 2, 1996 onward. None of the recorded documents were attached to the printout. The trial court denied the motion for reconsideration, noting that the most recent document referenced in the August 11, 2017 printout was dated August 2015, almost two years before the court ruled on the summary judgment motion. The court ruled that nothing in the printout constituted a new fact that could not have been presented in opposition to the summary judgment motion, and that Plaintiff had not come forward with a valid basis for a motion for reconsideration.

Judgment was entered for Tinsley. Plaintiff timely appealed, and was represented by counsel in the preparation and briefing of his appeal. Tinsley did not file a respondent's brief, and oral argument was waived; therefore, we decide the appeal on the record and Plaintiff's opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

DISCUSSION

A. *Applicable Law*

A defendant is entitled to summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the [defendant] is entitled to judgment as a matter of law." (§ 437c, subd. (c).) If a defendant moving for summary judgment meets its burden of showing that "one or more elements of the cause of action . . . cannot be established . . . the burden shifts to the plaintiff . . . to show . . . a triable issue of one or more material facts exists as to the cause of action . . . . The plaintiff . . . shall not rely upon the allegations or denials of its pleadings to show . . . a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists." (*Id.*, subd. (p)(2).) "We review a grant of summary judgment de novo; we must decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law." (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348.)

Even on an appeal from a summary judgment, however, "[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority,

we consider the issues waived. [Citations.]" (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) This principle applies in summary judgment cases: our review is limited to the issues that are adequately raised and supported in the appellant's brief. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 (*Reyes*); see also Eisenberg et al., Cal. Practice guide: Civil Appeals and Writs (The Rutter Group 2018) ¶ 8:17.2, pp. 8-6 – 8-7.) "Issues not raised in an appellant's brief are deemed waived or abandoned." (*Reyes* at p. 466, fn. 6.) In raising issues on appeal, an appellant must "present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; otherwise, the point will be forfeited." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656 (*Keyes*), citing Cal. Rules of Court, rule 8.204(a)(1)(B).) And arguments that are not appropriately supported by authority and analysis may be deemed forfeited. (*Id.* at p. 655.) Bearing these principles in mind, as well as the principle that as appellant, Plaintiff has the burden to affirmatively show error by the trial court (*ibid.*), we turn to his arguments.

B. *Analysis*

We have reviewed the papers filed in the trial court and conclude that Tinsley met his initial burden of production and came forward with evidence that Plaintiff could not prove that he has sole title to the Property, which is an element of Plaintiff's claim. Plaintiff appears to concede this point on appeal, where he contends that summary judgment was improper because as plaintiff he raised a triable issue of fact.

On appeal, Plaintiff claims that in ruling on summary judgment the trial court erred by failing to consider one of the documents that was before it, specifically the deed signed in 2005 and recorded in 2008, in which Senora transferred the property to herself, Plaintiff, and Earl Quincy as joint tenants.[8] This argument is forfeited by Plaintiff's failure to support it with analysis. (*Keyes*, *supra*, 189 Cal.App.4th 647, 655.) Plaintiff says the document extinguished Senora's joint tenancy with Tinsley, but he provides no

[8] Plaintiff concedes that the parties did not use the document in connection with Tinsley's motion for summary judgment.

supporting explanation, argument or authority. Further, he makes conflicting claims about the significance of the 2008 deed for his interest in the Property, again without explanation or authority: first he claims the document shows there is a triable issue of fact as to whether he has a 50 percent interest in the Property, and then he claims that the document demonstrates his "100% fee simple interest" in the Property. This is not adequate appellate argument: Plaintiff has not shown how the document creates a triable issue of fact as to Plaintiff's sole ownership of the Property. Moreover, even if the document raised a triable issue as to whether Plaintiff has a 50 percent interest in the property, it would not suffice to raise a triable issue that Plaintiff has sole ownership, particularly in light of Plaintiff's allegation in his complaint that he and Tinsley share title to the Property.

Separately, Plaintiff argues that the deed recorded in 2005, which granted Tinsley a joint interest in the property was fraudulent and void, and that Plaintiff should be given the opportunity to prove this at trial. But the Fourth Amended Complaint alleges only that the 2005 deed exists: it contains no allegations that the deed is fraudulent or void. The allegations in a complaint determine the issues that a defendant must address to prevail on a motion for summary judgment (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258), and therefore this issue was not properly before the trial court and is not properly before us. In any event, like Plaintiff's contentions about the 2008 deed, his contentions about the 2005 deed are forfeited by his failure to support them by reasoned argument or authority on appeal. (*Keyes*, *supra*, 189 Cal.App.4th at p. 655.)

Plaintiff also argues that he is entitled to a jury trial on his claim that Tinsley breached a stipulation to quitclaim his interest in the property. However, the Fourth Amended Complaint does not allege a cause of action for breach of a stipulation, and does not even allege the existence of such a stipulation; it alleges only that Tinsley has refused to quitclaim his interest in the Property.[9] Plaintiff cannot rely on causes of action

[9] Plaintiff's Third Amended Complaint mentions an alleged breach of a stipulation in connection with a cause of action for fraud. Tinsley's demurrer to that cause of action was sustained without leave to amend, as we discuss below.

that he did not plead to argue that the trial court erred in granting summary judgment. Recognizing that he failed to allege a cause of action for breach, Plaintiff asks for leave to amend his complaint. The request, unsupported by any legal authority, is untimely.

In a related argument, Plaintiff claims that allegations he made in his *Third* Amended Complaint establish a triable issue of material fact as to a cause of action for fraud. But the fraud cause of action was not part of the Fourth Amended Complaint on which summary judgment was granted. True, Plaintiff's Third Amended Complaint included a cause of action against Tinsley for fraud, based primarily upon allegations that in 2011, in connection with Tinsley's Chapter 13 bankruptcy, Tinsley signed a stipulation in which he agreed to quitclaim his interest in the Property upon receiving approval from Chase Home Finance, LLC and the bankruptcy trustee. The trial court sustained Tinsley's demurrer to the fraud cause of action in the Third Amended Complaint without leave to amend. To the extent that Plaintiff's reference in his appellate brief to the Third Amended Complaint might be construed as an appeal of the trial court's decision on the merits of the demurrer to the fraud cause of action, it fails because Plaintiff provides no argument or authority that the trial court erred in sustaining the demurrer to his fraud cause of action without leave to amend. In any event, allegations in a complaint, even a verified complaint, do not constitute evidence or suffice to raise a triable issue of fact. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7.)

Plaintiff also contends that based on his claims of relief for quiet title and fraud, this court should grant him "equitable relief for conspiracy" and declaratory relief. We have already addressed the absence of any allegation of fraud in the Fourth Amended Complaint. Similarly absent are any allegations suggesting conspiracy. Plaintiff's *Second* Amended Complaint purported to state a cause of action for conspiracy against Tinsley and others, but the trial court sustained Tinsley's demurrer to that cause of action without leave to amend, and Plaintiff does not challenge that ruling. Even if the Fourth Amended Complaint had included allegations of fraud and conspiracy, Plaintiff has forfeited any claim of error as to those issues by failing to provide authority and reasoned argument on appeal. In particular, Plaintiff cites no authority to suggest that we could or

should grant such relief in reviewing the trial court's ruling on Tinsley's motion for summary judgment.

We turn briefly to Plaintiff's statement that the trial court erred in denying his motion for reconsideration. Plaintiff does not address this issue in any of his argument headings or present any argument to support his contention. He says nothing in his brief about the 2017 printout from the Assessor's Office, or about the substance of any documents that were presented to the Assessor's Office in 2015. Accordingly we deem the issue forfeited. (*Keyes*, *supra*, 189 Cal.App.4th at pp. 655, 656.) In any event, the 2017 printout shows only that three documents were recorded by the Assessor's Office in August 2015. It provides no information about the substance of those documents, and raises no triable issue as to Plaintiff's alleged sole title to the Property.

In sum, we conclude that Plaintiff has not met his burden to show error by the trial court.

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover costs, if any, on appeal.

_____
Miller, J.

We concur:

_____
Kline, P.J.

_____
Richman, J.

A152699, *Glaude v. Tinsley*